

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**January 28, 2014**

Diane M. Fremgen  
Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2013AP479**

**Cir. Ct. No. 2012TR23704**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

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**COUNTY OF MILWAUKEE,**

**PLAINTIFF-RESPONDENT,**

**V.**

**SHEAR WINSTON,**

**DEFENDANT-APPELLANT.**

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APPEAL from an order of the circuit court for Milwaukee County:  
DANIEL KONKOL, Judge. *Affirmed.*

¶1 KESSLER, J.<sup>1</sup> Shear Winston, *pro se*, appeals an order of the circuit court denying his motion for reimbursement of court costs. We affirm the circuit court.

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2011-12).

All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

## BACKGROUND

¶2 On March 4, 2012, Winston received a traffic citation for speeding. This citation was filed with the circuit court on March 28, 2012 in Milwaukee County Circuit Court Case No. 2012TR9797, and Winston made his initial appearance on April 3, 2012. Case No. 2012TR9797 was dismissed without prejudice on July 10, 2012.<sup>2</sup>

¶3 On August 13, 2012, the Milwaukee County Sheriff's Office reissued the citation and filed it with the circuit court. The case was assigned Milwaukee County Circuit Court Case No. 2012TR23704 and Winston made his initial appearance on August 13, 2012. Winston filed a motion to dismiss based upon the claim preclusion doctrine, which was denied by a court commissioner on September 6, 2012. The court commissioner entered a plea of not guilty on Winston's behalf on September 12, 2012, and the matter was assigned to a Milwaukee County judge.<sup>3</sup>

¶4 After paying the jury fee, Winston subpoenaed Assistant District Attorney Kristin Schrank, the prosecutor who had appeared at the July 10, 2012 hearing in case No. 2012TR9797. The State moved to quash this subpoena. On November 29, 2012, the circuit court dismissed case No. 2012TR23704—the case in which Winston's citation was reissued—without prejudice. At that hearing, the State informed the circuit court that had the Sheriff's Deputy consulted with the State, the State would not have authorized the reissued citation. The State then moved to dismiss with prejudice, or in the alternative, to have the record note that

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<sup>2</sup> The case was dismissed by the Honorable Jean DiMotto.

<sup>3</sup> The Honorable Daniel Konkol presided over the remainder of Winston's case.

the ticket should not be reissued. The circuit court dismissed the case without prejudice, stating “there has been no determination on the merits.”

¶5 On December 10, 2012, Winston filed a motion for court costs in case No. 2012TR23704. Winston argued that, pursuant to WIS. STAT. §§ 814.04(2), 814.11, 814.03, 814.025, and 885.11(1), he was the prevailing party and entitled to \$1,097.83 in disbursements, expenses, and costs. Winston also provided an affidavit and itemization of these costs. The State opposed, arguing that Winston’s motion for costs should be denied because the costs sought were not recognized as recoverable costs under state law and that Winston’s affidavit failed to explain how his costs were necessary. The circuit court denied Winston’s motion on January 11, 2013. The court ruled that pursuant to WIS. STAT. § 345.53, costs may not be taxed against the plaintiff in traffic matters. The court also found Winston’s pleadings insufficient.

¶6 On February 1, 2013, Winston filed an “Objection to [the State’s] Response to Defendant’s Motion For Cost.” Winston’s “objection” raised several new issues: (1) pursuant to the RICO Act, there was an unlawful and conspired extortion of his rights in the guise of a fraudulent civil action; (2) the Sheriff’s Deputy who reissued Winston’s citation was not a lawful party to the action and erroneously reissued the citation; (3) that case No. 2012TR23704 was commenced by fraud; (4) the circuit court dismissed case No. 2012TR9797 without prejudice because the County’s witness was on vacation and could not proceed to trial, but the County did not produce any proof of this; (4) the State’s motion to quash Winston’s subpoena to ADA Shrank constituted concealment of evidence and violated Winston’s due process rights; and (5) the County failed to comply with Winston’s Open Records request for the instructions and records concerning a “laser” device used in the original traffic stop. Winston also addressed the State’s

assertions that he was not entitled to costs and that his affidavit was insufficient. Winston further addressed the circuit court's reliance upon WIS. STAT. § 345.53 by arguing that Winston was not seeking to tax the County, as only a government can tax. The circuit court interpreted this document as a motion for reconsideration for the denial of Winston's motion for costs. The circuit court denied the motion. This appeal follows.

### DISCUSSION

¶7 We note first that Winston filed a notice of appeal for case Nos. 2012TR9797 and 2012TR23704. Winston's notice requested a new trial, but also referenced the circuit court's denial of his motions for costs. We only consider Winston's appeal as to case No. 2012TR23704 because Winston's appeal of case No. 2012TR9797 was dismissed on April 1, 2013, for a violation of WIS. STAT. § 809.83(2). Winston's attempt to consolidate the two cases for appeal was also denied.

¶8 The sole issue in this case is whether, under WIS. STAT. § 345.53, Winston's motion for costs was properly denied. This is a question of law that we review *de novo*. See **Bohrer v. City of Milwaukee**, 2001 WI App 237, ¶7, 248 Wis. 2d 319, 635 N.W.2d 816.

¶9 Winston argues that as the prevailing party in case No. 2012TR23704, he was entitled to costs pursuant to WIS. STAT. §§ 814.04(2) (items of cost—disbursements) and 885.11(1) (disobedient witness—failure to appear). Contrary to Winston's contention, however, his claim for costs is not controlled by §§ 814.04(2) and 885.11(1). Rather, Winston's claims arise out of a traffic

forfeiture, subject to WIS. STAT. § 345.20.<sup>4</sup> Accordingly, Winston’s claims for costs are governed by WIS. STAT. § 345.53.

¶10 Our interpretation of WIS. STAT. § 345.53 begins with the language of the statute itself. See *Van Erden v. Sobczak*, 2004 WI App 40, ¶11, 271 Wis. 2d 163, 677 N.W.2d 718. If the statutory language is clear and unambiguous, we apply the language without further inquiry into legislative intent. See *id.*

¶11 WISCONSIN STAT. § 345.53 states: “[i]n traffic regulation actions in all courts, costs may not be taxed against the plaintiff.” The language of the statute is clear: costs simply are not taxed against plaintiffs in traffic forfeitures. Although Winston contends that he is not literally “taxing” the County, the language of the statute does not suggest an actual taxation similar to property or income taxes. Rather, the statute clearly contemplates that costs cannot be imposed upon a plaintiff in traffic forfeiture. See *County of Walworth v. Rohner*, 108 Wis. 2d 713, 722, 324 N.W.2d 682 (1982) (trial court erred in conditioning the filing of a criminal traffic complaint on the district attorney’s willingness to pay costs in connection with the dismissal of the county’s action based on the language of § 345.53, which prohibits costs in traffic actions from being assessed against a plaintiff). The circuit court properly denied Winston’s motion for costs.

¶12 As to Winston’s numerous other claims, we conclude that his claims are either irrelevant to this appeal, improperly pled, or improperly briefed. Winston argues multiple due process violations, including: (1) a violation of an

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<sup>4</sup> WISCONSIN STAT. § 345.20(2)(a) provides: “Except as provided in par. (b), the apprehension of alleged violators of traffic regulations and the trial of forfeiture actions for the violation of traffic regulations shall be governed by ss. 345.21 to 345.53. Where no specific procedure is provided in ss. 345.21 to 345.53, ch. 799 shall apply to such actions in circuit court.”

open records request; (2) double jeopardy; (3) judicial bias; (4) extortion; (5) unprofessional prosecutorial conduct; and (6) civil procedure violations.

¶13 Winston’s argument as to his open record request is irrelevant to the circuit court’s order denying his motion for costs. We do not address this issue further. Winston cannot maintain a claim for double jeopardy because he has never had a trial on either case, as both have been dismissed. Further, nothing in the record supports Winston’s claims of judicial bias or civil procedure violations; Winston points to no relevant law supporting his contention that the reissuing of his traffic citation constituted an attempt to extort fees from him; and Winston’s claims of unprofessional prosecutorial conduct were not properly raised before the circuit court. We do not address these issues further. *See State v. Shaffer*, 96 Wis. 2d 531, 545-46, 292 N.W.2d 370 (Ct. App. 1980) (We do not address issues unsupported by legal authority.); *Vesely v. Security First Nat’l Bank of Sheboygan Trust Dep’t*, 128 Wis. 2d 246, 255 n.5, 381 N.W.2d 593 (Ct. App. 1985) (We do not address arguments that are not developed.); *Young v. Young*, 124 Wis. 2d 306, 316, 369 N.W.2d 178 (Ct. App. 1985) (“The party alleging error has the burden of establishing, by reference to the record, that the error was raised before the [circuit] court.”).

¶14 For the foregoing reasons, we affirm the circuit court.

*By the Court.*—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.

